IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.Nos.5395 of 1996 and 3145 of 1997

W.P.No.5395 of 1996:

Chemplast Sanmar Limited
(previously known as Chemicals
and Plastics India Ltd.)
Mettur Dam
Salem District. .. Petitioner

versus

1. The Presiding Officer
   Labour Court
   Salem.

2. Allimuthu
3. R.Samiappan
4. G.Jaypal
5. Chellamuthu
6. V.Natarajan
7. N.Rajalingam
8. Marimuthu
9. K.Srinivasan
10. K.Palanilappan
11. C.Palaniappan
12. A.M.Purushothaman
13. V.Chellan
14. K.Marimuthu
15. Antony Guruz
16. S.John
17. N.Sengodan
18. R.Kumarasamy
19. Chinnathambi
20. S.Thangavelu
21. V.Manickam
22. G.Rangan
23. L.Appusamy
24. I.Manickam
25. S.Srirangan
26. Mathappan
27. C.Muthumanickam

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28. Palaniappan
29. Kaveri
30. Palaniappan
31. V.Alagappan
32. Santhappan
33. K.Natarajan
34. K.Seviappan
35. Palani
36. Duraisamy
37. Ammasi
38. S.Srinivasan
39. M.Thangavelu
40. S.Iyyankutti
41. K.Ponnappan
42. C.Mathes
43. S.Thangavelu
44. Mohamad Ghouse
45. S.Ramasamy
46. Chinnappan
47. P.Pongiannan
48. Chinnamuthu
49. P.Muniyan
50. Chinnusamy
51. R.Karuppusamy
52. R.Santhanam
53. P.Mathappan
54. P.Kutty Goundan
55. Yesudoss
56. P.Ramasamy
57. K.Chinnaponnu
58. P.Chidambaram
59. Goundappan
60. P.Ramadurai
61. Anantharaman
62. S.P.Govindan
63. K.Natesan
64. Mamoosa
65. Ayyadurai
66. O.P.Shanmugam
67. Kandan
68. R.Krishnan
69. G.Kannappan
70. Chinnapaiyan
71. V.Marimuthu
72. A.Angappan
73. S.Thangavelu
74. P.Kandasamy
75. K.Muthu
76. G.Mani
77. R.Srinivasaraghavan

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78. S.Kali
79. I.Chinnappan
80. A.Mathilairaj
81. Pavayee
82. Christinamary
83. Chinnaponnu .. Respondents

Respondent Nos.81 to 83 have been impleaded as party respondents by order of Court dated 7.2.2004 in W.P.M.P.Nos. 1856 to 1858 of 2004.

W.P.No.3145 of 1997:

Chemplast Sanmar Limited
(previously known as Chemicals and Plastics India Ltd.)
Mettur Dam. .. Petitioner

versus

1. The Presiding Officer
   Labour Court
   Salem-1.

2. K.Angappan
3. N.Perumal
4. K.Sengodan
5. P.Arusamy
6. T.S.Srinivasamoorthy
7. K.Anai Gounder
8. S.Basha
9. P.Perumal

10. V.Ramasamy
11. P.Marimuthu
12. S.Thangavelu
13. P.Perumal
14. K.Kaliappan
15. P.Balasubramaniam
16. C.Chinnannan
17. K.Jayaraman
18. A.Hansar Basha
19. N.Ramachandran
20. K.Sri Rangan
21. N.Arunachalam
22. R.Kalyanasundaram
23. A.Pachiappan (deceased)

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24. C.Alagappan
25. M.Marimuthu
26. V.Chinnaraman
27. S.P.Rathinam
28. A.Kandan
29. N.Doraisamy
30. V.Madhusamy
31. K.Subramanian
32. P.Chinnapaiyan
33. M.Madhappan
34. R.Velayudham (deceased)
35. K.G.Mahadevan
36. D.Srinivasan
37. P.Palaniammal
38. P.Krishnamoorthy
39. P.Murugan
40. P.Raja
41. P.Maheswari
42. V.Govindammal
43. V.Murugesan
44. T.Kandammal
45. V.Govindan
46. V.Kandasamy .. Respondents

Respondents-40 and 41 are represented by natural guardian and mother.

Respondents 37 to 41 are substituted as legal representatives of the deceased 23rd respondent as per the order of Court dated 24.1.1998 in W.M.P.No.29244 of 1997.

Respondents-42 to 46 are substituted as legal representatives of the deceased 34th respondent as per order of Court dated 24.1.1998 in W.M.P.No. 29245 of 1997.

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PRAYER: W.P.No.5395 of 1996 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari to call for the records connected with the common order made by the first respondent on C.P.Nos.106 to 184 of 1995 and to quash the said order dated 18.3.1996.

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W.P.No.3147 of 1997 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari to call for the records connected with the common order made by the first respondent in C.P.Nos.130 to 160 of 1996 and C.P.Nos.192 to 195 of 1996 and to quash the said order dated 6.1.1997.

For petitioner in both W.Ps. : Mr.A.L.Somayaji
Senior Advocate
for Mr.S.Ravindran, for
M/s.T.S.Gopalan & Co.

For respondents-2 to 12 and
14 to 80 in W.P.No.5395
of 1996 and respondents-2
to 33 and 35 to 46 in
W.P.No.3145 of 1997 : Mr.N.G.R.Prasad
for M/s.Row & Reddy

ORDER

In W.P.No.5395 of 1996, M/s.Chemplast Sanmar Limited seeks for quashing the common order of the Presiding Officer, Labour Court, Salem, in a batch of Claim Petitions, dated 18.3.1996.

2. In W.P.No.3147 of 1997, another common order of the labour Court dated 6.1.1997 in a further batch of claim petitions is questioned.

3. As the issues which arise for consideration are common and identical, they are heard together.

4. The pleadings and factual circumstances which led to each of the individuals filing the respective claim petitions before the Labour Court are common. Though the dates of each one of them leaving the services of the Management may vary, such variation does not have any impact on the legal issue which arises for consideration in these two writ petitions. Hence, for convenience, the pleadings in C.P.No.106 of 1995 filed by one Allimuthu/claimant, are extracted below.

5. The claimant has contended that he was employed under the Management in their factory/Office and Mettur Dam. Service conditions of all the workers were governed by the Standing Orders of the Company and the Settlement signed between themselves. The previous Settlement dated 7.7.1990 expired on 31.3.1994. The Unions, which included the petitioner, placed a charter of demands in April, 1994. However, the Management was protracting the

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negotiations, as a result of which, new Settlement could not be reached between the Management and the Workmen. A new Settlement was signed only on 6.2.1995.

6. The claimant further contended that in the meantime, the Management, by their notice dated 10.7.1994, introduced a Voluntary Retirement Scheme to tackle the problem of large work force not being in consonance with the actual requirements. The claimant states that he submitted his application in terms of the Voluntary Retirement Scheme (V.R.S.) in July, 1994. The Management accepted the application and the claimant was superannuated from service with effect from 1.8.1994.

7. The negotiation which was continuing between the Management and the Workmen culminated in a Settlement dated 6.2.1995, providing for revision of wages and other benefits for the Workmen. In terms of the Settlement, the arrears payable under the Settlement will be paid on or before 18.2.1995, including the Workmen who have retired on superannuation or died while in service between 1.4.1994 and 6.2.1995. The claimant contended that he was retired not on account of reaching the superannuation at 58 years, but on account of superannuation under V.R.S. After seeing the terms of the Settlement dated 6.2.1995, some of the workers who were superannuated on V.R.S., had requested the Management for the payment of arrears which they would have received on the basis of the revised wages, in terms of the Settlement. A meeting of similarly placed Workmen was held during the third week of March, 1995. The delegates met the Vice President of the Company and repeated their grievances. They were informed that the Management had rejected their request, whereupon, the petitioners have decided to file Computation Petitions.

8. The claimant further contended before the labour Court, that in the course of negotiations, the Management had expressed that the benefit of the Settlement dated 6.2.1995, would be given only to those Workmen who retired on reaching the age of superannuation, namely, 58 years and not for Workmen like the petitioners, who had retired under V.R.S. However, according to the petitioners, a reading of the Settlement would disclose that it was not restricted to only those who retired on regular superannuation.

9. In the counter statement filed by the Management, the Company stated that the petitioner had tendered his resignation by his letter dated 15.7.1994. His resignation was accepted on 31.7.1994. Hence, after the date of acceptance of resignation, the relationship of employer and employee had come to an end and hence, the petitioner cannot claim to be an employee after 31.7.1994. The relationship of employer and employee had been put

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an end to.

10. The Management further contended that in terms of the V.R.S., the Company had formulated its own Special Gratuity Scheme, by which, the employees were entitled to certain benefits of lumpsum payment, based on their past service, as special gratuity. The said grant was solely for the benefit of the former employees. The first instalment was paid on 16.8.1994 and the second and third instalments would be payable in future as per the option of the petitioner. The petitioner having resigned from the job, he was paid with the amount due under the V.R.S.

11. As regards the charter of demands, it is only after prolonged discussions, the Management and the workers, as on the date of 6.2.1995, agreed and entered into a Settlement under Section 18(1) of the Industrial Disputes Act. In terms of the Settlement, revised scale of pay and certain other benefits were also granted. It was made clear in paragraph 1 of the Settlement itself that the terms and conditions shall apply only to permanent employees on the rolls of the Company as on the date of signing the Settlement, namely, 6.2.1995. Clauses 36 and 37 of the Settlement also relate to the payment of arrears of the period of operation of the Settlement. Therefore, the Settlement was not at all applicable to the petitioner.

12. The Management further contended that a petition under Section 33-C(2) was purely in the nature of an execution petition and unless and otherwise the claim was based on any award, Settlement or statute, the claim petition will not be maintainable. Therefore, the impugned claim petitions under Section 33-C(2) cannot be maintained. The Management further contended that the Settlement executed under Section 18(1) dated 6.2.1995 would cover only the permanent employees who were on the rolls as on the said date. The petitioner cannot claim to be an employee who had retired from service on superannuation. They had resigned from their respective posts and hence, cannot claim to have been superannuated from service. Therefore, the claim based on an assumption as if the petitioners are superannuated from service cannot be sustained. Clause 36 of the agreement clearly provides that only persons who have retired on superannuation are eligible for arrears and hence cannot be relied upon by persons who have resigned or opted for V.R.S.

13. A detailed reply statement was also filed on behalf of the claimant, disputing the various contentions raised by the Management in their counter affidavit. The petitioner had reiterated that he had not resigned from the post, but had only retired under the V.R.S. Retirement on V.R.S. was also retirement on superannuation. The Management cannot contend that the petitioner had resigned from service. The petitioner opted to go

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on V.R.S. only by virtue of the notice of the Management dated 10.7.1994, but for which, the claimant would have continued in service till he reached the age of retirement, as fixed under the Standing Orders. The claimant also stated that the financial position of the Company was sound and that the Management was one of the blue-chip companies with a profit of more than Rs.20 crores annually. The petitioner and others like himself were told by the Management that compensation would be revised on the basis of the Settlement to be signed subsequently, namely, Settlement dated 6.2.1995. It was unfortunate that the respondent should now go back on their words and raise untenable objections.

14. The Labour Court, on consideration of the pleadings and the evidence, concluded that the case of the claimants cannot be treated as resignation, but only as on superannuation under Voluntary Retirement Scheme and therefore, they would be entitled for the benefit of Voluntary Retirement Scheme as well as the agreement under Section 18(1) of the Industrial Disputes Act. The Labour Court also held that having regard to the facts and circumstances that they had voluntarily left the services only on being informed about the benefits of the V.R.S., on grounds of equity and justice also, they would be entitled to the benefits they had claimed. Consequently, the claim petitions were allowed, awarding specific amounts due for each worker/claimant, after deducting the amounts already received by them.

15. Mr.A.L.Somayaji, learned senior counsel representing the petitioner/Management, contended that the claim petitions under Section 33-C(2) were totally misconceived. The claim was not based on any prior award or decision declaring the rights of the employees to receive the benefits which they had claimed or any settlement between the parties. On the contrary, the basis of the claim was very much disputed and objected to by the Management and hence, the labour Court ought not to have entertained the claim petitions. A perusal of the impugned order itself would disclose that the labour Court had allowed the claims only on the basis of its conclusion that the claimants deserve to be paid on grounds of equity and justice. Such considerations were irrelevant in a petition under Section 33-C(2) and the only question which ought to have been considered by the labour Court is whether the claimants are entitled to any relief as a legal right. Learned senior counsel also took me through the V.R.S. notice dated 10.7.1994 and the settlement dated 6.2.1995 under Section 18 of the Industrial Disputes Act and contended that the specific clauses thereunder are explicit that the benefits of the agreement cannot be claimed by the claimants who had resigned from the post. They did not retire in the regular course of their service conditions or by superannuation and their exit cannot be treated as superannuation as the labour Court had wrongly interpreted. In fact, the wage revision was contemplated only for the benefit of

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the workers having agreed to maintain the optimum production and hence, the benefit would not have been contemplated for employees who had opted to resign. The terms of the settlement were also very clear and intended only to favour the workers who were on the rolls as on the date of execution of the settlement, namely, 6.2.1995, vide Clause No.1. The finding of the labour Court that Clause No.1 of the settlement specifying that it would apply only to those permanent workmen on the rolls as on that day was given a go bye and was not given effect to, was not based on any evidence. Such inferences are contrary to the actual terms of the written agreement and therefore, they are

neither correct nor warranted. There was also no intention to include the workers, who had gone on V.R.S.

16. Learned senior counsel also contended that there was clear distinction between Voluntary Retirement and regular retirement on superannuation. The settlement was not intended to benefit the employees who had left on their own under the Voluntary Retirement Scheme. Under Section 2(oo) of the Industrial Disputes Act, "Voluntary retirement" and "retirement on superannuation" are classified differently. Under Clause 36 of the agreement, it was made clear that the benefits of the agreement were to be made available only to those who "retire on superannuation."

17. Learned senior counsel further contended that the pleadings of both sides were very clear that there were disputed questions of fact and the claim was not based on any award or any explicit agreement between the parties and hence, the claim petition under Section 33-C(2) was not at all maintainable.

18. Reliance was placed on various rulings in support of the above contentions, which will be dealt with later.

19. Mr.N.G.R.Prasad, appearing for the claimants, refers to the circumstances under which the Voluntary Retirement Scheme was introduced. The earlier settlement having lapsed, there was negotiation between the Management and the Workers. It is only in those circumstances, initiation came from the Management for Voluntary Retirement Scheme and the letters of the employees themselves would show that they did not resign from the post, but were leaving under Voluntary Retirement Scheme. The workers were made to understand that they would be entitled to the benefits of Voluntary Retirement Scheme. Learned counsel further contended that the Voluntary Retirement Scheme was not based on the wage structure as on 31.3.1994, but only as on 1.4.1994. The formula under Voluntary Retirement Scheme was only on the basis of salary as on 1.4.1994. The workers had opted for Voluntary Retirement Scheme only on the understanding that the benefits will be fixed on the basis of the revised pay scale to be fixed after

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the negotiations. A perusal of the letters of the employees will show that they opted to leave the service only on the basis of the Voluntary Retirement Scheme offered by the Management. It was, therefore, open to the Labour Court to see under what circumstances the employees opted to leave the service and to interpret the facts available on record, which was permissible under Section 33-C(2) of the Industrial Disputes Act. The only fact that a counter affidavit is filed by the Management denying the just claims of the workers cannot result in rendering the claim petition unsustainable and that the workers should be driven to raise a dispute. It is unfair on the part of the Management to have induced the workers to leave the service on a representation that they will receive the benefits of the Voluntary Retirement Scheme and the settlement to be arrived at, and thereafter, to deny the said benefits.

20. Clause 36 of the settlement clearly indicates that the benefits thereunder shall apply to all employees who retired on superannuation or died while in service between 1.4.1994 till the date of settlement, namely, 6.2.1994. Therefore, the retrospective effect of the settlement was very clear on the basis of the settlement itself. The expression "superannuation" would include the cases of the claimants also. Superannuation cannot mean only retirement on attaining of the age of retirement, but also include the cases of V.R.S. The various rulings relied on by Mr.N.G.R.Prasad will also be dealt with subsequently.

21. In reply, Mr.Somayaji, learned senior counsel, contended that the claimants knew what was their salary as on 1.4.1994. Voluntary Retirement Scheme was introduced only on 10.4.1994. The claim petition proceeds only on the basis of the settlement and not as contended by the claimants. While interpreting the settlement, which came into picture only on a later date, no new rights can be claimed in a petition under Section 33-C(2). The award has been granted only on the interpretation adopted by the labour Court on its own notions of equity and interest of justice and not on the basis of the alleged rights of parties or under the settlement, which was not permissible under Section 33-C(2).

22. I have considered the submissions of both sides. The issue of maintainability may be taken up at the end of the discussion of the other issues, which would throw a better light on the background in which the employees had filed the claim petition under Section 33-C(2).

23. There is no dispute over the fact that all the claimants left the service only pursuant to the Voluntary Retirement Scheme. Though in the claim petition as well as before this Court, there was an attempt by the Management to term the claimants leaving the service as on "resignation", it is clearly admitted in the writ

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petition itself (paragraph 5 of the affidavit) that the claimants had voluntarily retired as per the scheme of July, 1994. Apart from this clear admission, a perusal of the letter of the claimant also clearly discloses the circumstances under which he left the service. Identically worded letters were sent by all the claimants and also the letter of acceptance by the Management. The following is the letter sent by the claimants:

> " தங்களது 10.7.94 தேதிய பி டி எ/ நெம்பர் நோட்டீஸ் பிரகாரம் கம்பெனியினால் அறிவிக்கப்பட்டுள்ள தானாக வேலையை விட்டு நீங்கும் திட்டத்தை (ஏ,சு,ளு,) ஏற்றுக்கொண்டு என் சொந்த குடும்ப காரணங்களுக்காக என்னுடைய வேலையை ராஜினாமா செய்கிறேன். என்னுடைய இந்த ராஜினாமாவை ஏற்றுக்கொண்டு மேற்படி தங்கள் நோட்டீசில் குறிப்பிட்டுள்ளபடி எனக்கு கிடைக்க வேண்டிய கூடுதல் தொகையையும் சேர்த்து அளித்து எனது கணக்குகளை முடித்துக் கொடுக்கும்படி கேட்டுக் கொள்கிறேன்.
>
> 2) மேற்படி திட்டத்தின் கீழ் நான் வேலையை விட்டு விலகும் போது எனக்கு கம்பெனி வீடு கொடுத்த போது எழுதிக்கொடுத்த வாத்தமானத்தில் உள்ள உடிரத்து/2ன்படி நான் ரிலீவ் செய்யப்பட்ட தேதியிலிருந்து ஒருமாத காலத்திற்குள் வீட்டை காலி செய்து விடுவதாகவும் உறுதி கூறகிறேன்.
>
> 3) எனது பிஎப். நாமினியையே மேற்படி நோட்டீசின் பத்தின்படி நாமினியாகவும் இருக்க சம்மதிக்கிறேன்."

24. In response to the said letter, the Management had forwarded their acceptance as follows:

> " 10.7.94 தேதிய பி டி எ/9249 நெ. கம்பெனி நோட்டீசின் பிரகாரம் அறிவிக்கப்பட்ட திட்டத்தின் கீழ் மேற்படி உமது விண்ணப்பத்தின்படி நீர் கொடுத்திருக்கும் ராஜினாமாவை நிர்வாகம் பரிசீலித்து அதை ஏற்றுக்கொள்வதென தீர்மானித்திருக்கிறது.
>
> நீர் நமது சர்வீசிலிருந்து தேதி இறுதியுடன் வேலையிலிருந்து ஓய்வு பெறுகிறீர். "

25. Therefore, two indisputable fact situations emerge, namely, that the claimants had left the service only on voluntary retirement and not by resignation simpliciter, as sought to be contended by the Management. It is also clear that the claimants went on voluntary retirement during the month of July, 1994 after 10.7.1994, being the date of the scheme. The reason why the Management was harping on the expression "resignation" is an attempt on their part to raise a legal contention that the act of the claimants having left the services by resignation cannot amount to superannuation and that therefore, the claimants were not entitled to the settlement dated 6.2.1995.

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26. Though the benefits of the Voluntary Retirement Scheme had been disbursed to the claimants, the claims of the employees pertain to the terms of the Long-term Wage Settlement dated 6.2.1995. The question which, therefore, arises for consideration is whether the subsequent settlement is retrospective, and even if it be retrospective, whether it would apply to the employees who have gone out of service on voluntary retirement.

27. On the question whether the settlement dated 6.2.1995 is retrospective or not, it is necessary to extract Clause 36 of the settlement, which is the crucial provision relevant to consider both the above issues:

> "36. Arrears payable under this settlement will be paid on or before 18th February 1995, (including to these permanent workmen who have retired on superannuation or died while in service between 01.04.94 and the date of signing this settlement) income tax deductions will be made from the arrears arising out of this settlement. "

28. Clause 36 clearly spells out that it applies to all workmen who were in service as on 1.4.1994 and after, subject, of course, to two conditions, namely, that they should have retired on superannuation or died while in service between 1.4.1994 and 6.2.1995. If so, it follows that the settlement is retrospective from 1.4.1994. It is true that Clause 1 mentions that the conditions of settlement shall apply only to those workmen on the rolls of the company as on the date of signing the settlement. There is an obvious conflict between the two provisions. Therefore, the effect of both the provisions have to be harmoniously interpreted as far as possible. Clause 36 deals with a specific issue of applying the benefits to the employees who were working from 1.4.1994. Hence, to the extent Clause 1 is inconsistent, Clause 1 has to be ignored. In fact, the Management, faced with the clear language under Clause 36, did not press its contention that the settlement should apply only to the employees who were actual parties and who had signed the agreement. Such a contention cannot be sustained, having regard to the clear terms of Clause 36. I am, therefore, inclined to hold that the settlement is retrospective and would apply also to employees who are not actual signatories to the settlement, subject to the limitations contained in Clause 36. The next issue is more appropriate as to whether the retrospective effect of Clause 36 would extend to the claimants also, who had been working after 1.4.1994. Rival submissions have been made on the effect of the expression "retire on superannuation" and whether it would include voluntary retirement also.

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29. While the Management contends that voluntary retirement is not superannuation, the contention on behalf of the claimants is that voluntary retirement and retirement on attainment of age of superannuation are one and the same. I am inclined to agree with the contention on behalf of the claimants for the following reasons.

30. In I.T.I. LTD. Vs. I.T.I. Ex/VR EMPLOYEES AND OTHERS (2002-II-LLJ 1101), a Division Bench of the Karnataka High Court had to deal with a case in which the employees on voluntary retirement who were entitled to one and half months' pay on the date of voluntary retirement, claimed the benefits of subsequent revision of pay scale with effect from a date prior to such retirement. The Division Bench held that inasmuch as the pay was revised with retrospective effect, it is made applicable to the retired employees also and such benefit would be available to the employees including the employees who had gone on voluntary retirement. This conclusion was arrived at on the reason that as they were also in service and had rendered their duties during the relevant period, they will also be entitled to the benefits.

31. Reliance is also placed on the definition of the word "superannuated" in New Oxford Dictionary – Page 1862:

> " [as adj. Superannuated] (of a post or employee) belonging to a superannuation scheme: she is not superannuated and has no paid holiday [usu. as adj. superannuated] cause to become obselete through age or new technological or intellectual developments: superannuated computing equipment. "

On the basis of the said definition, Mr.Prasad contends that superannuation would not only mean reaching of the age of retirement, but also due to any other reason.

32. Per contra, Mr.Somayaji, learned senior counsel, contends that Clause 36, does not use the expression "voluntary retirement" and it refers to only "superannuation". Superannuation can be reached only by completion of the age of retirement. Reference is made to the following four rulings:

(i) J.K.COTTON SPINNING & WEAVING MILLS CO. LTD., KANPUR Vs. STATE OF U.P. & OTHERS (1991-I-LLJ 39);
(ii) BANK OF INDIA AND OTHERS Vs. O.P.SWARNAKAR (2003-I-LLJ 819);
(iii) GODREJ SOAPS LTD. Vs. BABAN BABURAO NEMANE (2003 (3) LLN 1036; and
(iv) PAL VRS EMPLOYEES WELFARE ASSOCIATION Vs. PREMIER AUTOMOBILES LTD. AND ANOTHER (2002-III LLJ 415 (Bombay).

33. I have considered the submissions of both sides.

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34. It is true that Clause 36 uses only the expression "retired on superannuation". It is pertinent to note that it does not also mention "voluntary retirement". It is equally true that it does not specifically mention or restrict superannuation only on reaching the age of retirement.

35. In my opinion, there is no variation between the expression "retirement" and "superannuation". Both mean the same. Retirement could result either on reaching the age of retirement or by compulsory retirement or by voluntary retirement, which involves the necessity of consent between both parties. While the age of retirement is automatic on completion of age, compulsory retirement is a unilateral action of the employer in terms of the service regulations. Voluntary retirement is on consent by both parties, one party making the offer and the other party accepting the same, without waiting for the completion of the age.

36. Though it is within the powers of the employer to prescribe the age of retirement, it is settled proposition that most of the terms of employment are contractual in nature, including the fixation of the retirement age. When an individual is appointed, one of the terms under which the employer offers the employment is that he shall retire on attaining the age of retirement. The employee accepts the contract of service, one of the terms of the contract being that he will retire on attaining the age of superannuation. In the case of voluntary retirement also, both parties agree that the employee shall retire even earlier to the date of retirement subject to the conditions as may be agreed to between the parties. That these are matters in the realm of contract, is not disputed by the Management. In one of the judgments of the Supreme Court relied on by the Management itself, it is clearly brought out that the offer and acceptance of the proposals of voluntary retirement is a contractual issue vide BANK OF INDIA AND OTHERS Vs. O.P.SWARNAKAR (2003-I-LLJ 819) supra.

37. Therefore, voluntary retirement is no more and no less than an accelerated form of retirement or superannuation on agreement between both parties. It follows that voluntary retirement is also superannuation from service. The only difference, if any, is that superannuation is accelerated on agreement by parties instead of the employee reaching the age of retirement.

38. In the said background, I am inclined to hold that if the intention was to exclude employees under the Voluntary Retirement Scheme from the benefit of the settlement, it should have been specifically stated in Clause 36 expressing exclusion of the employees who have left the service on voluntary retirement on and

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after 1.4.2004.

39. Even assuming for the sake of discussion that two interpretations are possible, the one which is more favourable to the weaker section has to be adopted vide the judgment of the Supreme Court in K.C.P. EMPLOYEES' ASSOCIATION, MADRAS Vs. MANAGEMENT OF K.C.P. LTD., MADRAS AND OTHERS (1978-I-LLJ 322). Though this judgment is sought to be distinguished by Mr.Somayaji, learned senior counsel, that it arose out of a reference of a dispute, I do not think that it should make any difference to the basic rules of interpretation.

40. The judgment of the Supreme Court in J.K.COTTON SPINNING & WEAVING MILLS CO. LTD., KANPUR Vs. STATE OF U.P. & OTHERS (1991-I-LLJ 39), relied on by the petitioner, is of no help to him. That was a case where the Supreme Court spelt out the difference between retrenchment on the one hand and voluntary retirement and resignation on the other.

41. The judgment in BANK OF INDIA AND OTHERS Vs. O.P.SWARNAKAR (2003-I-LLJ 819) deals with the legal incidents of offer and acceptance and the effect of V.R.S. and does not deal with the proposition under consideration in this case.

42. In GODREJ SOAPS LTD. Vs. BABAN BABURAO NEMANE (2003 (3) LLN 1036, a learned single Judge of the Bombay High Court dealt with a claim of voluntarily retired employee for ex gratia payment, which was disbursed long after his leaving the service of the employer. While holding that he will not be entitled to the said amount, the learned single Judge has also observed that superannuation was not synonymous with voluntary retirement. Though the facts of the said case clearly disentitle the claim by the employee, namely, the ex gratia payment having been made only subsequent to his retirement, with due respect, I am unable to concur with the view that superannuation was not synonymous with voluntary retirement. Whether in a given case superannuation would include voluntary retirement or not has to depend on the interpretation of the settlement or agreement, etc., as in the present case.

43. In conclusion, I am inclined to hold that the expression "retire on superannuation" would include also cases of voluntary retirement. The said conclusion is arrived at not only on the basis of the above discussion, but also the fact that various issues of dispute between the Management and Labour were admittedly under negotiation between the Unions and the Management at the time when V.R.S. was formulated, the earlier settlement having lapsed. It is only in those circumstances, Clause 36 was made applicable to the employees who were in service even as on and from 1.4.1994. There is no explanation as to why the

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Management had to accept the said condition of applying the settlement retrospectively from 1.4.1994. The settlement was a culmination of a prolonged negotiation, taking into account the rights of the employees who were on the rolls as on 1.4.1994 and subsequently. That being so, there is no justification to deny the benefits to the claimants.

44. In the above background, what remains to be considered is the scope of a petition under Section 33-C(2) and whether such a petition could be entertained in the facts and circumstances of the present case. It is true that the Supreme Court had held that a proceeding under

Section 33-C(2) was in the nature of an Execution Petition vide the following judgments:

(i) MUNICIPAL CORPORATION OF DELHI Vs. GANESH RAZAK & ANOTHER (1995-I-LLJ 395) and
(ii) STATE BANK OF INDIA Vs. R.C.DUBEY (2001 (1) LLN 58).

45. At the same time, in the background of the facts as mentioned above, it has to be appreciated that there is a distinction between a claim petition under Section 33-C(1) and 33-C(2) of the Industrial Disputes Act. Under Section 33-C(1), the claim has to be in respect of money which is due to the workmen and an employer under a settlement or an award or under the provisions of Chapter 5A or 5B. Under Section 33-C(2), the workman is entitled to receive from the employer any money or such benefit which is capable of being computed in terms of money and if any question arises as to the amount due, then, the question can be decided by the labour Court. The distinction between Sections 33-C(1) and 33-C(2) would clearly bring out that while the former has to depend on a definite settlement or award, in the latter provision, power is given to the labour Court to compute the claim, vis-a-vis, the benefit which is claimed by the employee, thus giving room for the labour Court to interpret the basis of the claim.

46. In this case, the claim is based only on the basis of the circumstances under which the V.R.S. was implemented and the scope of the settlement. What was required to be done by the labour Court was only to interpret the settlement and to find out whether the claimants were entitled to the claim. The only circumstance of the employer denying the facts stated in the claim petition cannot result in rejecting the claim petition, if the rights of the claimants are perceivable on an interpretation of the settlement. Otherwise, practically, no petition can be entertained under Section 33-C(2) and no positive orders can be contemplated in such a petition by the Management filing a counter affidavit denying the liability.

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47. In SAHU MINERALS AND PROPERTIES LTD. Vs. PRESIDING OFFICER, LABOUR COURT AND OTHERS ((1976) 3 SCC 93), the Supreme Court positively held that Section 33-C(2) will take within its purview, claims of workmen, even though the right to the benefit on which their claim is based is disputed by

their employers. In arriving at the said conclusion, the Supreme Court relied on its earlier decision in CENTRAL BANK OF INDIA Vs. P.S.RAJAGOPALAN (AIR 1964 SC 743).

48. Therefore, the only circumstance of the employer denying the claim by filing a counter affidavit cannot result in rejecting the claim petition. As stated earlier and as the above discussion would disclose, the entire issue relates to the interpretation of the words "retired on superannuation" as occurring in Clause 36 of the Settlement. The issue does not depend on any contentious disputes on facts or disputed claims.

49. The next objection to the award by the learned senior counsel for the Management is that the award has been passed by the labour Court only on the basis of its opinion that the claim was sustainable on principles of justice and equity and that such consideration cannot arise in a petition under Section 33-C(2) vide the judgment of the Supreme Court in KERALA SOLVENT EXTRACTIONS LTD. Vs. A.UNNIKRISHNAN (1994-II-LLJ 888).

50. I am unable to sustain the said objection. The said reasoning by the labour Court is only one of the several reasons adopted while passing the award. A perusal of the award shows that the labour Court had positively found that in terms of the settlement dated 6.2.1995, the claimants were entitled to the benefits. The said observations came to be made after sufficient discussion and found in the same paragraph No.16, where the labour Court had also stated that the defence of the Management was not in accordance with the principles of equity and justice. The said observation has been made only as an additional reason and with a view to emphasise its conclusion on various grounds. Therefore, the reference to equity and justice or sympathy alone cannot result in non-suiting the claim, which is otherwise sustainable. Moreover, in this order, I have also independently considered the mutual submissions and found them in favour of the claimants. If the ultimate conclusions are sustainable on other grounds also, there is no reason to interfere with the award.

51. The reliance placed by the learned senior counsel for the Management with reference to the definition of Section 2(oo) dealing with retrenchment also is of no help to the petitioner. The only fact that voluntary retirement and retirement of the workman on reaching the age of superannuation are treated

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separately in the said definition, cannot lead to the conclusion that voluntary retirement and superannuation cannot be equated.

52. With the result, I am inclined to confirm the award. It is also made clear that if under the terms of the Voluntary Retirement Scheme the claimants have already received any benefits, the same will be taken into account while finally determining the benefits available under the settlement.

The writ petitions are dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ksv

To:
The Presiding Officer
Labour Court
Salem.

+ 1 CC to Mr.S.Ayyathurai, Advocate SR NO 4808

+ 2 CCs to M/s.T.S.Gopalan & Co.Advocate SR NOs 4812, 4811

+ 1 CC to M/s.Row & Reddy, Advocate SR NO 4667

W.P.Nos.5395 of 1996
and 3145 of 1997
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